IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.09.2007
CORAM:
THE HONOURABLE MR. JUSTICE S.MANIKUMAR
W.P.No.25260 and 25261 of 2007
M.P.Nos.1 and 1 of 2007

M/s.Chopard Builders (P) Ltd.,
rep. by its Director,
Sushil George ... Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
Singanallur Circle, Coimbatore.

2. The Additional Appellate Assistant
Commissioner (CT) Coimbatore-18. ... Respondents

Prayer in W.P.No.25260 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TNGST.1822143/97-98, dated 12.06.2007, quash the same and direct the first respondent to pass orders afresh in accordance with the direction of the second respondent in A.P.No.1254 of 2002 dated 18.07.2005, after issue of show cause notice and opportunity in accordance with the provision of the Tamil Nadu General Sales Tax Act, 1959.

Prayer in W.P.No.25261 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TNGST.1822143/98-99, dated 12.06.2007, quash the same and direct the first respondent to pass orders afresh in accordance with the direction of the second respondent in A.P.No.1026 of 2004 dated 07.11.2005, after issue of show cause notice and opportunity in accordance with the provision of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.R.Mahadevan,
Additional Government Pleader (Taxes)
O R D E R
In both the Writ Petitions, the petitioner has challenged the revised orders of the Deputy Commercial Tax Officer, Singanallur Circle, Coimbatore, the first respondent herein in respect of assessment years 1997-98 and 1998-99 respectively. Since the facts and law involved in both Writ Petitions are one and the same, they are taken up together and disposed of by a common order.

2. Brief facts leading to the Writ Petition are as follows:
The petitioner is a registered dealer under the Tamil Nadu General Sales Tax Act, (hereinafter referred to as "the Act") and an assessee on the file of the first respondent herein. The place of business of the petitioner was inspected by the Enforcement Wing Officers on 10.10.1998 and certain records, such as, books of accounts, purchase bills and sales invoices were recovered. It is the case of the petitioner that in spite of repeated requests, the regular books of accounts and other records said to have been recovered were retained by the Enforcement Wing officials and therefore, the petitioner could not represent his case effectively before the Deputy Commercial Tax Officer, the first respondent herein for finalization of the proceedings. It is the further case of the petitioner that

the purchase invoices and other connected records related to the transactions made after the date of inspection were readily available with the petitioner and though they were willing to produce the same before the assessing officer to enable him to check the records along with seized records for finalization of assessment proceedings for the years 1997-98 and 1998-99, their request was not accepted by the assessing officer and he passed the best of judgment assessment order on 30.06.2000.

3. Aggrieved by the same, the petitioner filed two separate appeals under Section 31 of the Act, before the Additional Appellate Assistant Commissioner (CT) Coimbatore-18, second respondent herein, praying for a direction to the first respondent to return the seized regular books of accounts and other records and if such prayer was not capable of being complied with, atleast for a direction to furnish the xerox copies of those records at their costs. The petitioner also undertook to produce the purchase invoices and other books of accounts available with them, after the date of inspection, whenever the assessing officer issued notice for production of the same.

4. Considering the plea of the petitioner, the appellate authority by order dated 30.03.2001, set aside both the assessment orders and remanded the matter back to the assessing authority for fresh disposal, after due check of accounts, which were said to be available with the petitioner. The appellate authority further directed that copies of the records recovered from the place of business of the petitioner at the time of inspection should be furnished to the petitioner and opportunity of personal hearing should also be given, while passing the assessment order. In the same order, the appellate authority also directed the petitioner to appear in person before the assessing authority with the books of accounts, within two months from the date of receipt of the copy of the order.

5. The petitioner further submitted that pursuant to the directions of the appellate authority, he had produced the available records with purchase bills before the assessing officer for verification on 22.02.2002. On verification of the records, the first respondent directed the petitioner to obtain affidavits from the respective sellers, and confirm whether the seller had infact paid the tax to their respective assessing authority or not. The petitioner has further submitted that as the assessing officer has got powers under Sections 54 and 54-A of the Act to obtain a certificate of proof of earlier sufferance of tax from the respective assessing officers of the sellers, he ought not to have insisted the petitioner to file affidavits from the sellers as proof of evidence for earlier sufferance of tax. Though the direction of the assessing officer was not acceptable of compliance, however, the petitioner requested to grant sufficient time so as to make serious efforts to obtain and file the affidavits from the sellers. When the assessee was trying to get the affidavit from their sellers, the first respondent again passed a similar order of assessment on 26.09.2002, without complying with the request made by the petitioner.

6. It is further submitted by the petitioner that on appeal, the orders dated 26.09.2002, passed by the assessing authority, the first respondent herein, were again set aside by the appellate authority on 18.07.2005 and 07.11.2005 respectively and the matters were remanded back once again to the assessing officer, with a direction to carefully recheck the transactions of the assessee with the entries in their accounts and particulars mentioned in D7 slips etc., correlate them and then pass a legally justifiable assessment order. The appellate authority further directed that in the case of purchase bills available with the petitioner indicating the single point tax sufferance, the assessing authority has to issue cross check references, which will be a far more legally valid than demanding the petitioner to file affidavits from the sellers.

7. The petitioner further submitted that without complying with the directions of the appellate authority, the assessing officer has passed the impugned orders of assessment on the ground that one of the Directors, Thiru.Sushil George has failed to produce the accounts and utilise the

opportunities given to the assessee and therefore, the proposals made in the notice dated 16.06.2006 were confirmed. Aggrieved by the same, the petitioner has preferred the above Writ Petitions for the relief as stated above.

8. Learned counsel for the petitioner submitted that the first respondent being a quasi-judicial authority, ought to have carried out the directions of the appellate authority and cross checked the accounts by way of issuing summons under Sections 54 and 54A of the TNGST Act to the respective sellers in Coimbatore and ascertained the payment made by them. He further submitted that the assessing officer, is expected to follow the principles of natural justice and the procedure contemplated under the Act, before passing the impugned orders and in the absence of any statutory notice issued to the assessee, calling from one of the partners, details over the mobile phone, as recorded in the impugned order is contrary to the procedure and therefore, the impugned orders are liable to be set aside.

9. The main grounds urged by the learned counsel for the petitioner are that, i) The first respondent being a quasi-judicial authority ought to have issued a notice to the petitioner to produce the accounts and ii) the first respondent has failed to issue summons under Sections 54 and 54-A of the Act to the respective dealers to cross-check the sale transactions and payment of sales by the sellers of the assessee.

10. On the contrary, Mr.R.Mahadevan, learned Additional Government Pleader, for the respondent submitted that the first respondent-assessing authority has followed the directions of the appellate authority promptly and though notices issued to the petitioner were acknowledged by one of the Directors, viz., Sushil George Vargese, he has failed to honour his promise and produced the accounts and therefore, in the absense of any materials to correlate the purchases effected from the sellers, and suffernce of tax at their hands, the assessing officer has rightly passed the impugned orders which are in conformity with the directions and the procedure contemplated under the Act and therefore, the impugned orders do not warrant any interference of this Court.

11. Heard Mr.R.Senniappan, learned counsel for the petitioner, Mr.R.Mahadevan, learned Additional Government Pleader, for the respondents and perused the records submitted by him. The above Writ Petitions are against the assessment orders for the assessment years 1997-98 and 1998-99 respectively.

12. Perusal of the records reveal that petitioner's place of business was inspected by the Enforcement Wing Officials on 10.10.1998 and they recovered the following materials,

"1. One correspondence filed marked (A) containing business transactions = 92 slips.
2. Invoices filed marked (B) containing Invoice copies and Delivery chalan copies for the year 1997-98 = 57 slips.
3. File marked (C) delivery chalan Books containing 109 sheets for the year 1997-98 used sheets 1 to 21 unused leaves 22 to 109.
4. Invoice file marked (D) 103 pages. Used invoice pages 1 to 10, 14 to 17, 18 to 19 cancelled and original copy of the invoice No.13/25.03.1998 not available 20 to 44, unused 45 to 103.
5. One peacock Brand file marked (E) containing purchase bills for 97-98 = 32 Nos.
6. One Eagle file marked (F) containing order forms 42 nos.
7. One conora office file marked (G) containing 33 sheets to other state purchases and corresponding letter."

13. The matter has been remitted by the appellate authority on two occasions to the assessing officer. In so far as the first occasion is concerned, for assessment year 1997-98, the dealers have

not filed returns. The assessing authority has issued summons for the production of the accounts, for which, the dealer did not respond and therefore, the assessing authority proposed to assess the tax based on the available records and issued a detailed notice in assessment in TNGST.1822143/97-98, dated 28.02.2000. The notice issued by the department was acknowledged by one A.Varghese on 03.03.2000 and though the petitioner has requested time to produce their accounts, they did not do so and therefore, the proposals were confirmed on 30.06.2000. On appeal, the appellate authority directed the assessing officer to recheck the accounts available with the petitioner and also give an opportunity of hearing. Pursuant to the remand order, the assessing authority directed the petitioner to appear and produce books of accounts within two months from the date of receipt of the order.

14. The records produced by the Department further reveal that as per the directions of the appellate authority, the petitioner had produced the records and purchase bills for verification on 22.02.2002. Upon verification of particulars furnished by the petitioner, a notice was issued on 28.06.2002 to the petitioner with a request to obtain and file affidavits from six dealers from whom, the purchases were effected, with the details of the turnover and the taxes paid thereon. The assessing authority also directed the petitioner to file their reply within 25.09.2002, failing which, the proposals would be confirmed. Notices sent by Registered Post with acknowledgment due to all the Directors of the company, viz., 1) Abraham Varghese 2) Molly Abraham Varghese and 3) Susil George Varghese were received by them on different dates. On receipt of the said notice, Mr.Sushil George Varghese, Managing Director had appeared before the assessing authority and requested time till November 2002, stating that they have obtained five affidavits from their dealers along with the bills and other details to prove the purchase.
15. It is further evident from the records that during the time of processing of D7 records, the petitioner has not produced the necessary affidavits and bills to prove that sufferance of tax at the earlier stages within the State of Tamil Nadu. Since already seven months had elapsed, the assessing authority rejected the request of the petitioner for extension of time and once again confirmed the same proposals as per the Original Order. On appeal, the appellate authority by order dated 18.07.2005 in A.P.No.1254 of 2002, set aside the assessment order once again and directed the assessing authority to recheck the transactions of the assessee with the entries in their accounts and pass a justifiable assessment order. Thereafter, on receipt of the notice, Mr.Sushil George appeared on 16.12.2006 and submitted a letter stating that the account books were with the auditor and that he would produce them on 17.12.2006. Since he has failed to produce the same, the assessing officer has confirmed the proposals, by his order dated 12.06.2007.

16. Similarly, for the assessment year 1998-99, the assessing authority has issued six summons fixing various dates for production of accounts and since there was no response, the assessing officer proposed to assess the tax based on the records available and issued a detailed notice in Asst.No.1822143/98-99 dated 29.02.2000. The above said notice was received by A.Varghese on 09.03.2003. The petitioner had submitted a letter dated 14.03.2000, stating that the Managing Director, Mr.Sushil George has met with an accident and therefore, it would not be possible to submit the accounts and file their objections. He has further submitted that as there was a dispute between the directors, it was not possible for him to submit their objections. Thereafter, Mr.Sushil George had filed a letter dated 22.06.2000 and submitted that he was recovering from the accident and sought time till 14.07.2000 for submitting all the books of accounts. Since the books of accounts were not produced, the assessing officer confirmed the proposals on 30.06.2000 with an observation that sufficient time was already granted. The petitioner has filed an appeal before the appellate authority in A.P.No.1322 of 2000 and by order dated 30.03.2001, the appellate authority remanded the matter with the directions as stated supra.

17. Pursuant to the directions of the appellate authority, a notice was issued to the petitioner on 07.05.2003, to obtain and file affidavits from the dealers from whom purchases were effected and

also submit the details of the turnover reported by them to the Department. The said notices sent by Registered Post with acknowledgment due to all the Directors of the Company, viz., 1) Abraham Varghese 2) Molly Abraham Varghese and 3) Susil George Varghese were received by them on 28.03.2003. As the assessee failed to file their objections within the stipulated time, the assessing authority has once again confirmed the proposals and therefore, the petitioner filed another appeal before the appellate authority in A.P.No.1026 of 2004 and the same was ordered on 07.11.2005 with a direction to the assessing officer to carefully recheck the transactions of the assessee with the entries in their accounts and pass justifiable assessment order and issue cross check reference for verifying the proof of tax sufferance. Thereafter, on receipt of the notice, Mr.Sushil George appeared on 16.12.2006 and submitted a letter stating that the account books were with the auditor and he would produce them on 17.12.2006. But he failed to produce the same and therefore, the assessing officer confirmed the proposals, by vide order dated 12.06.2007.

18. At the first instance, as per the directions of the First Appellate Authority, though the petitioner had filed copies of available purchase bills, the assessing authority directed the petitioner to obtain affidavits from the respective sellers so as to confirm whether the seller had in fact paid the tax to the respective assessing authority or not. Therefore, the main contention of the petitioner, at that time was that though the assessing officer had powers under Section 54 and 54A of the Act to obtain the certificate of proof of earlier sufferance of tax from the respective assessing officers, he ought not to have directed to the petitioner to obtain and file affidavits for the payment of tax from the sellers as evidence for earlier sufferance of tax, and therefore, the proceedings was illegal.

19. In the second round of appeals, the appellate authority directed the assessing officer to verify from the respective sellers by issue of cross check references to their respective assessing officers and obtain the proof of payment of tax made by them and thereafter, pass the justifiable order. Before the appellate authority, the contention of the petitioner was that the assessing authority should not have contacted the assessee over phone and that a statutory notice ought to have been issued to the assessee and the assessing officer ought to have issued cross-check reference to find out the payment of tax by sellers.

20. As mentioned in the earlier paragrahs, D7 records recovered from the petitioner's premises were only 7 in number and not the entire records as submitted by the petitioner. Perusal of the records submitted by the State counsel reveal that the petitioner never requested the Department for the copies of D7 records till the revised order was passed for the second time on 12.06.2007.
21. As stated supra, pursuant to the notice, Mr.Sushil George, had appeared in person and promised to produce the accounts. Inspite of opportunity, the dealer had failed to produce the necessary documents/accounts to correlate with D7 records. Without furnishing the necessary details to the assessing officer to correlate with D7 records, the dealer cannot find fault with the assessing officer and contend that the assessing officer had failed to issue summons to cross check from the dealers from whom the purchases have been effected.
22. In the case cited by the petitoner in Ragam Polymers v. CTO, Ice House Assessment Circle, Chennai reported in 8 VST 131, this Court at Paragraph No.7, held that when the appellate authority has given certain directions to the assessing officer, while remanding the matter, the assessing officer cannot over-reach the appellate authority's order. In the instant case, on facts, it cannot be said that the assessing officer has over-reached the directions granted by the appellate authority. On contrary, the appellate authority had given sufficient notice to the assessee to produce certain records for the purpose of correlation with D7 records.

23. As stated supra, though one of the Directors appeared in person, he had failed to utilise the opportunity of personal hearing and therefore, it is not open to the petitioner to say that the assessing authority has failed to comply with the directions of the appellate authority. Merely

because, the assessing officer had contacted the assessee over phone, no motive can be attributed without any specific allegations.

24. Statute provides an appeal remedy under Section 31 of the TNGST Act. The fact that is disputed in these Writ Petitions is in respect of goods purchased, the sellers had already paid tax and the goods suffered tax at their hands and there is no question of law to be decided. In the light of the discussion, I am of the view that the directions of the appellate authority have been properly complied with by the assessing officer and the petitioner has not made out any strong grounds. The impugned orders do not warrant any interference.

25. The Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

17.09.2007
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To
1. The Deputy Commercial Tax Officer,
Singanallur Circle, Coimbatore.

2. The Additional Appellate Assistant
Commissioner (CT) Coimbatore-18.

S. MANIKUMAR, J.

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17.09.2007